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13 **BEFORE THE**
14 **RESPIRATORY CARE BOARD**
15 **DEPARTMENT OF CONSUMER AFFAIRS**
16 **STATE OF CALIFORNIA**

17 In the Matter of the Petition to Revoke Probation
18 and Accusation Against:

19 HECTOR E. ARCE, R.C.P.
20 10241 San Nicholas Court
21 Rancho Cucamonga, CA 91730

22 Respiratory Care Practitioner License
23 No. 22505

24 Respondent.

Case No. D1-2005-320

**PETITION TO REVOKE
PROBATION AND ACCUSATION**

25 Complainant alleges:

26 **PARTIES**

27 1. Stephanie Nunez (Complainant) brings this Petition to Revoke Probation and
28 Accusation solely in her official capacity as the Executive Officer of the Respiratory Care Board,
Department of Consumer Affairs (RCB).

2. On or about August 15, 2002, the RCB issued Respiratory Care Practitioner
License No. 22505 to Hector E. Arce (Respondent). The license was in effect at all times
relevant to the charges brought herein, and will expire on July 31, 2009, unless renewed.

3. In a disciplinary action entitled "In the Matter of the Accusation Against Hector E.
Arce.," Case No. R-2067, the RCB issued a decision, effective March 17, 2008, in which

Respondent's license was revoked. However, the revocation was stayed and Respondent's license was placed on probation for a period of three (3) years with probationary conditions. A copy of that decision is attached as Exhibit A and is incorporated here by reference.

JURISDICTION

4. This Petition to Revoke Probation and Accusation is brought before the RCB under the authority of the California Business & Professions Code section 3718 that states: "The board shall issue, deny, suspend, and revoke licenses to practice respiratory care as provided in this chapter."

5. This Petition to Revoke Probation and Accusation is also brought before the Board under the authority of the Board's decision in case number R-2067, which provides in pertinent part as follows:

"IT IS HEREBY ORDERED that Respiratory Care Practitioner License No. 22505 issued to Respondent Hector E. Arce is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years from the effective date of this decision on the following terms and conditions:

". . . .

"17. **VIOLATION OF PROBATION**

If Respondent violates any term of the probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If a petition to revoke probation is filed against Respondent during probation, the Board shall have continuing jurisdiction and the period of probation shall be extended until the matter is final. No petition for modification of penalty shall be considered while there is an accusation or petition to revoke probation or other penalty pending against Respondent.

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1 **CHARGES AND ALLEGATIONS**

2 **FIRST CAUSE TO REVOKE PROBATION**

3 (Failure to Submit Current Work Schedules)

4 6. At all times after the effective date of Respondent's probation, Probation
5 Condition 2 required Respondent to submit his work schedules to his probation monitor on a
6 weekly/monthly basis.

7 7. Probation Condition # 2 provides as follows:

8 **WORK SCHEDULES**

9 Respondent shall be required to submit to the probation monitor work schedules
10 on a weekly/monthly basis for the length of probation. Respondent shall ensure the
Board has a copy of his current work schedule at all times for each place of employment.

11 Failure to submit current work schedules on a continuous basis shall constitute a
12 violation of probation and shall result in the filing of an accusation and/or a petition to
revoke probation against Respondent's respiratory care practitioner license.

13 8. The facts and circumstances surrounding the violation of Probation Condition #2
14 are that at least between July 2008 and February 2009, Respondent did not provide his work
15 schedules to his probation monitor.

16 **SECOND CAUSE TO REVOKE PROBATION**

17 (Failure to Comply with Biological Fluid Testing)

18 9. At all times after the effective date of Respondent's probation, Probation
19 Condition 3 required that Respondent comply with random biological fluid testing.

20 10. Probation Condition #3 provides as follows:

21 **BIOLOGICAL FLUID TESTING**

22 Respondent, at his expense, shall participate in random testing, including, but not
23 limited to, biological fluid testing (i.e. urine, blood, saliva), breathalyzer, hair follicle
testing, or a drug screening program approved by the Board. Test costs range from
24 \$21.00 to \$200.00 each. The length of time shall be for the entire probation period. The
frequency and location of testing will be determined by the Board.

25 At all times, Respondent shall fully cooperate with the Board or any of its
representatives, and shall, when directed, appear for testing as requested and submit to
26 such tests and samples for the detection of alcohol, narcotics, hypnotics, dangerous drugs
or other controlled substances.

27 If Respondent is unable to provide a specimen in a reasonable amount of time
from the request, while at the work site, Respondent understands that any Board
representative may request from the supervisor, manager or director on duty to observe
28 Respondent in a manner that does not interrupt or jeopardize patient care in any manner

1 until such time Respondent provides a specimen acceptable to the Board.

2 Failure to submit to testing or appear as requested by any Board representative for
3 testing, as directed shall constitute a violation of probation and shall result in the filing of
4 an accusation and/or a petition to revoke probation against Respondent's respiratory care
5 practitioner license.

6 11. The facts and circumstances regarding the violation of Probation Condition #3 are
7 as follows:

8 A. On September 12, 2008, Respondent was required to provide a urine sample for
9 testing that day. He failed to do so.

10 B. On November 3, 2008, Respondent was required to provide a urine sample for
11 testing that day. He failed to do so.

12 C. On November 26, 2008, Respondent was required to provide a urine sample for
13 testing that day. He failed to do so.

14 D. On December 4, 2008, Respondent was required to provide a urine sample for
15 testing that day. He failed to do so.

16 E. On December 23, 2008, Respondent was required to provide a urine sample for
17 testing that day. He failed to do so.

18 F. On January 6, 2009, Respondent was required to provide a urine sample for
19 testing that day. He failed to do so.

20 G. On January 16, 2009, Respondent was required to provide a urine sample for
21 testing that day. He failed to do so.

22 H. On February 17, 2009, Respondent was required to provide a urine sample for
23 testing that day. He failed to do so.

24 I. Respondent failed to call in on the following dates to see if he was required to
25 test: May 11, 2008, June 14, 2008, September 11, 2008, October 8-12, 2008, October 14-20,
26 2008, November 9 and 27, 2008, December 12-31, 2008, January 1-11, 2009, February 15,
27 2009, and February 17-23, 2009, February 26 through March 1, 2009.

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1 THIRD CAUSE TO REVOKE PROBATION

2 (Failure to Abstain From Any and All Mood Altering Substances)

3 12. At all times after the effective date of Respondent's probation, Probation
4 Condition 4 required that Respondent abstain from any and all mood altering substances, absent a
5 legitimate medical prescription.

6 13. Probation Condition #4 provides as follows:

7 ABSTENTION FROM USE OF ANY AND ALL MOOD ALTERING SUBSTANCES

8 Respondent shall completely abstain from the possession or use of alcohol,
9 controlled substances, dangerous drugs, and any and all other mood altering drugs,
substances and their associated paraphernalia, except when the drugs are lawfully
prescribed by a licensed practitioner as part of a documented medical treatment.

10 Respondent shall execute a release authorizing the release of pharmacy and
11 prescribing records as well as physical and mental health medical records. Respondent
shall also provide information of treating physicians, counselors or any other treating
professionals as requested by the Board.

12 Respondent shall ensure that he is not in the presence of or in the same physical
13 location as individuals who are using illegal substances, even if Respondent is not
personally ingesting the drug(s).

14 Any positive result that registers over the established laboratory cutoff level shall
constitute a violation of probation and shall result in the filing of an accusation and/or a
petition to revoke probation against Respondent's respiratory care practitioner license.

15 Respondent also understands and agrees that any positive result that registers over
16 the established laboratory cutoff level shall be reported to each of Respondent's
employers.

17 14. The facts and circumstances regarding the violation of Probation Condition #4 are
18 that Respondent tested positive for ETG (4399 ng) on July 12, 2008.¹

19 FOURTH CAUSE TO REVOKE PROBATION

20 (Failure to File Quarterly Report)

21 15. At all times after the effective date of Respondent's probation, Probation
22 Condition #7 required that Respondent file quarterly reports with the Board.

23 16. Probation Condition #7 provides as follows:

24 QUARTERLY REPORTS

25 Respondent shall file quarterly reports of compliance under penalty of perjury, on
26 forms to be provided to the probation monitor assigned by the Board. Omission or
falsification in any manner of any information on these reports shall constitute a violation
27 of probation and shall result in the filing of an accusation and/or a petition to revoke

28 1. ETG is an indicator of alcohol use.

1 probation against Respondent's respiratory care practitioner license.

2 Quarterly report forms will be provided by the Board. Respondent is responsible
3 for contacting the Board to obtain additional forms if needed. Quarterly reports are due
4 for each year of probation and the entire length of probation as follows:

5 For the period covering January 1st through March 31st, reports are to be
6 completed and submitted between April 1st and April 7th. For the period covering April
7 1st through June 30th, reports are to be completed and submitted between July 1st and July
8 7th. For the period covering July 1st through September 30th, reports are to be completed
9 and submitted between October 1st and October 7th. For the period covering October 1st
10 through December 31st, reports are to be completed and submitted between January 1st
11 and January 7th.

12 Failure to submit complete and timely reports shall constitute a violation of
13 probation.

14 17. The fact and circumstance regarding the violation of Probation Condition #7 is
15 that Respondent failed to file his quarterly report due no later than January 7, 2009.

16 FIFTH CAUSE TO REVOKE PROBATION

17 (Failure to Comply with Probation Monitoring Costs)

18 18. At all times after the effective date of Respondent's probation, Condition #9
19 required Respondent to pay the costs of probation monitoring by the Board.

20 19. Probation Condition #9 provides as follows:

21 PROBATION MONITORING COSTS

22 All costs incurred for probation monitoring during the entire probation shall be
23 paid by the Respondent. The monthly cost may be adjusted as expenses are reduced or
24 increased. Respondent's failure to comply with all terms and conditions may also cause
25 this amount to be increased.

26 All payments for costs are to be sent directly to the Respiratory Care Board and
27 must be received by the date(s) specified. (Periods of tolling will not toll the probation
28 monitoring costs incurred.)

If Respondent is unable to submit costs for any month, he shall be required instead
to submit an explanation of why he is unable to submit the costs, and the date(s) he will
be able to submit the costs including payment amount(s). Supporting documentation and
evidence of why the Respondent is unable to make such payment(s) must accompany this
submission.

Respondent understands that failure to submit costs timely is a violation of
probation and submission of evidence demonstrating financial hardship does not preclude
the Board from pursuing further disciplinary action. However, Respondent understands
providing evidence and supporting documentation of financial hardship may delay further
disciplinary action.

In addition to any other disciplinary action taken by the Board, an unrestricted
license will not be issued at the end of the probationary period and the respiratory care
practitioner license will not be renewed, until such time all probation monitoring costs
have been paid.

The filing of bankruptcy by Respondent shall not relieve the Respondent of his
responsibility to reimburse the Board for costs incurred.

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20. The facts and circumstances regarding the violation of Probation Condition #9 are as follows:

A. Respondent has failed to make some of his monitoring costs payments, the last payment having been received on or about April 25, 2008. He is currently \$1,200.00 in arrears.

B. Respondent has not submitted any written explanation and evidence as to why he has not/cannot make monitoring costs payments.

SIXTH CAUSE TO REVOKE PROBATION

(Failure to Comply with Cost Recovery)

21. At all times after the effective date of Respondent's probation, Condition #14 required Respondent to pay cost recovery to the Board.

22. Probation Condition #14 provides as follows:

COST RECOVERY

Respondent shall pay to the Board a sum not to exceed the costs of the investigation and prosecution of this case. That sum shall be \$2,189.00, and shall be paid in full directly to the Board, in equal quarterly payments, within 12 months from the effective date of this decision. Cost recovery will not be tolled.

If Respondent is unable to submit costs timely, he shall be required instead to submit an explanation of why he is unable to submit these costs in part or in entirety, and the date(s) he will be able to submit the costs including payment amount(s). Supporting documentation and evidence of why the Respondent is unable to make such payment(s) must accompany this submission.

Respondent understands that failure to submit costs timely is a violation of probation, and submission of evidence demonstrating financial hardship does not preclude the Board from pursuing further disciplinary action. However, Respondent understands that providing evidence and supporting documentation of financial hardship may delay further disciplinary action.

Consideration to financial hardship will not be given should Respondent violate this term and condition, unless an unexpected AND unavoidable hardship is established from the date of this order to the date payment(s) is due.

The filing of bankruptcy by the Respondent shall not relieve the Respondent of his responsibility to reimburse the Board for these costs.

23. The facts and circumstances regarding the violation of Probation Condition #14 are as follows:

A. Respondent failed to make payments due in June, September, and December of 2008. He is \$1,641.75 in arrears.

B. Respondent has not submitted any written explanation and evidence as to why he has not/cannot make cost recovery payments.

1 **PRAYER**

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein
3 alleged, and that following the hearing, the Respiratory Care Board of California issue a decision:

4 1. Revoking the probation that was granted by the Board in Case No. R-2067 and
5 imposing the disciplinary order that was stayed, thereby revoking outright Respiratory Care
6 Practitioner License No. 22505 issued to Hector E. Arce;

7 2. Revoking or suspending RCP License No. 22505 issued to Hector E. Arce;

8 3. Ordering Hector E. Arce to pay the Respiratory Care Board the costs of the
9 investigation and enforcement of this case, and if probation is continued or extended, the costs of
10 probation monitoring;

11 4 Taking such other and further action as deemed necessary and proper.

12 DATED: March 9, 2009.

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14 Original signed by Colleen Whitestone for:
15 STEPHANIE NUNEZ
16 Executive Officer
17 Respiratory Care Board of California
18 Department of Consumer Affairs
19 State of California
20 Complainant
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